REMARKS

Claims 1-60 are pending in the present Application. Claims 11-20, 31-40, and 51-60 were withdrawn from consideration. Claims 41 and 46 have been amended herein. Applicants traverse the rejection of claims 1-20, 21-30, and 41-50 for the following reasons. For Examiner's convenience, the following arguments are presented in the same order as the rejections were discussed in the Office Action.

Claims 41-42, 44-47, and 49-50 are Patentable over Liu

Claims 41-42, 44-47,and 49-50 were rejected as being anticipated by U.S. Patent Application No. 2005/0136676 to Liu ("Liu"). Claims 41 and 46 respectively have been amended to recite "an insulating spacer substantially overlying said conductive layer, wherein an outer edge of said source is substantially aligned with an edge of said insulating spacer." Liu does not disclose this feature, as is clear from a review of the reference, *e.g.*, Figures 15 and 16.

Claims 43 and 48 are Patentable over Liu in View of Hsieh

Claims 43 and 48 were rejected under 35 U.S.C. § 103 as being unpatentable over Liu. Liu, which evidences a publication date of June 23, 2005 (i.e. after the date of Applicants' invention) qualifies as prior art only under 35 U.S.C. § 102(e). Hence, Liu cannot preclude patentability of the present invention because at the time the claimed invention was made, Liu and the present application were owned by, or subject to an obligation of assignment, to a common assignee. See 35 U.S.C. 103(c) ("Subject matter developed by another person, which qualifies as prior art only under one or more of

subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."). Applicants have attached a Statement of Common Ownership evidencing the common ownership between the present application and Liu.

Additionally, claims 43 and 48 depend from claims 41 and 46, respectively and are, hence, allowable over Liu for the reasons given above with regard to the respective base claims from which they depend, as well as for their further respective defining limitations.

Claims 21- 23 and 26-28, are Patentable Over Liu in View of Tseng and Hsieh

Claims 21-23 and 26-28 were rejected as being unpatentable over Liu in view of U.S. Patent Application No. 2003/0181053 to Tseng et al. ("Tseng") and further in view of U.S. Patent Application No. 2002/0093044 to Hsieh et al. ("Hsieh '044").

As addressed above, under 35 U.S.C. 103(c), Liu cannot preclude patentability of the claimed invention because both at the time the claimed invention was made, Liu and the present application were owned by, or subject to an obligation of assignment, to a common assignee. Hence, the rejection of claims 21-23 and 26-28 should be withdrawn.

In addition, Applicants respectfully submit that Examiner has failed to establish a proper motivation to combine the disparate reference relied upon to reject the claims.

Claims 24 and 29 are Patentable Over Liu in View of Tseng and Hsieh '044, and Hsieh

Claims 24 and 29 were rejected as being unpatentable over Liu in view of Tseng and Hsieh '044 and U.S. Patent No. 5,879,992 to Hsieh et al. ("Hsieh"). As addressed above, under

35 U.S.C. 103(c), Liu cannot preclude patentability of the claimed invention because both at the time the claimed invention was made, Liu and the present application were owned by, or subject to an obligation of assignment, to a common assignee. Hence, the rejection of claims 21-23 and 26-28 should be withdrawn.

In addition, Applicants respectfully submit that Examiner has failed to establish a proper motivation to combine the disparate reference relied upon to reject the claims.

Claims 25 and 30 are Patentable Over Liu in View of Tseng, Hsieh '044, and Yang

Claims 25 and 30 were rejected as being unpatentable over Liu in view of Tseng, and Hsieh '044, and U. S. Patent No. 6,875,658 issued to Yang ("Yang"). As addressed above, under 35 U.S.C. 103(c), Liu cannot preclude patentability of the claimed invention because both at the time the claimed invention was made, Liu and the present application were owned by, or subject to an obligation of assignment, to a common assignee. Hence, the rejection of claims 25 and 30 should be withdrawn.

In addition, Applicants respectfully submit that Examiner has failed to establish a proper motivation to combine the disparate reference relied upon to reject the claims. In fact, the need to pick and choose isolated teachings from four separate and disparate references is evidence, in and of itself, that subject matter of the present invention is unobvious.

Claims 1-4 and 6-9 are Patentable Over Liu in View of Tseng, and Hsieh '044, and Korovin

Claims 1-4 and 6-9 were rejected as being unpatentable over Liu in view of Tseng and Hsieh '044, and Korovin et al. ("Korovin"). Claims 25 and 30 were rejected as being

unpatentable over Liu in view of Tseng, and Hsieh '044, and U. S. Patent No. 6,875,658 issued to Yang ("Yang). As addressed above, under 35 U.S.C. 103(c), Liu cannot preclude patentability of the claimed invention because both at the time the claimed invention was made, Liu and the present application were owned by, or subject to an obligation of assignment, to a common assignee. Hence, the rejection of claims 25 and 30 should be withdrawn.

In addition, Applicants respectfully submit that Examiner has failed to establish a proper motivation to combine the disparate reference relied upon to reject the claims. In fact, the need to pick and choose isolated teachings from four separate and disparate references is evidence, in and of itself, that subject matter of the present invention is unobvious.

Furthermore, Examiner's assertion that it would be obvious to combine Korovin with Liu, Tseng, and Hsieh is traversed. Korovin is directed to eliminating or compensating for the effects of differences in deposited film thickness through a CMP process (Abstract, col. 3, line 8 through col. 4, line 55). This is the very antithesis of Applicants' claims 1-4 and 6-9 wherein a first and second spacer layer are specifically chosen having "deposition distribution" characterizations that vary in "substantial opposition." Because of this claimed combination of the first and second spacer layers with substantially opposite deposition distributions, there is simply no need for a subsequent planarization step – in other words, Korovin would direct one of skill in the art away from the invention of claims 1-4 and 6-9.

In summary, Liu fails as a prior art reference to invalidate the claims under 35 U.S.C. § 103. As such, any rejection based upon a combination of Liu with other references is improper. Additionally, Examiner has failed to establish a *prima facie* case of obviousness based upon the teachings of the references themselves because nothing in the references suggest their motivation

and indicate a reasonable likelihood that their combination would result in a successful embodiment of Applicants' claimed invention.

The amendment and remarks herein are believed to be fully responsive to the Examiner's Office Action and to place the application in a condition for allowance.

In view of the above, Applicants respectfully submit that the application is in condition for allowance and request that the Examiner pass the case to issuance. If the Examiner should have any questions, Applicants request that the Examiner contact Applicants' attorney at the address below. Accompanying this Amendment is a Petition for a one month Extension of Time on which to respond. Please charge the fees in connection with the filing, including credits or overpayments, to Deposit Account No. 50-1065.

Respectfully submitted,

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